IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 33228 of 2006(E)

OA.139/2004 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:

POOTHADY GRAMA PANCHAYATH,
REPRESENTED BY SECRETARY, PANCHAYATH OFFICE,
KENICHIRA P.O., WAYANAD.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.C.SASIDHARAN

RESPONDENTS:
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1. **SOUTH INDIAN BANK LTD.,**
   PULPALLY BRANCH, PULPALLY, WAYANAD DISTRICT.

2. **VINEESH M.G.,**
   PROPRIETOR, KAVERI TRADERS, KENICHIRA P.O.,
   RESIDING AT MATHALIYIL HOUSE, KENICHIRA P.O.,
   WAYANAD.

3. **BINDHU, W/O. VINEESH M.G.,**
   RESIDING AT MATHALIYIL HOUSE,
   KENICHIRA P.O., WAYANAD.

4. **RECOVERY OFFICER,**
   DEBT RECOVERY TRIBUNAL, ERNAKULAM.

5. **STATE OF KERALA, REPRESENTED BY**
   SECRETARY, LOCAL ADMINISTRATION DEPARTMENT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.K.K.JOHN for R1
BY GOVERNMENT PLEADER SRI. P.N.SANTHOSH KUMAR for R5

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/07/2007 ALONG WITH WPC NO. 27984 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.33228/2006 E

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE DOCUMENT NO.1904/01 OF PANAMARAM SUB REGISTRY.**

EXT.P2: **COPY OF THE AFFIDAVIT AND PETITION FILED BY THE 1ST RESPONDENT.**

EXT.P3: **COPY OF THE ORDER OF THE 4TH RESPONDENT TO THE PETITIONER DTD. 11/08/2006.**

EXT.P4; **COPY OF THE COUNTER FILED BY THE PETITIONER.**

EXT.P5: **COPY OF THE ORDER IN I.A.1308/2006.**

EXT.P6: **COPY OF THE IMPLEADING PETITION AS I.A.1755/2006.**

EXT.P7: **COPY OF THE ORDER DTD. 6/11/2006.**

EXT.P8; **COPY OF THE ORDER DTD. 26/10/2006.**

EXT.P9: **COPY OF THE SALE PROCLAMATION.**

/TRUE COPY/

KSS

C.N.RAMACHANDRAN NAIR,J

W.P.(C) NOs.33228/2006 and 27984 of 2006

Dated this the 4th day of July, 2007

JUDGMENT

W.P.(c)33228/2006 is filed by the petitioner Panchayath challenging recovery proceedings initiated by the 4th respondent against its property for recovery of the amount decreed by the Debt Recovery Tribunal in favour of the first respondent Bank. The case of the Panchayat is that it was unaware of the mortgage, if any, executed in favour of the first respondent Bank over the property purchased by it. Counsel for the first respondent Bank contended that the title deeds are with the Bank and the Panchayat has taken it's own risk in purchasing the property without verifying the equitable mortgage through deposit of title deeds. The first respondent Bank moved before the DRT for recovering the amount and in view of the mortgage the recovery officer is free to proceed to attach and sell the properties purchased by the Panchayat which is subject to charge

in favour of the first respondent Bank. However, since the Panchayat has made massive investment in the property and since the defaulter is stated to have other valuable properties, I direct the 4th respondent to proclaim other properties of defaulter for sale and sell the said properties first and if the decreed amount is not realised, then only the bank shall proceed against the property in question. However, if full liability is not recovered and if the Panchayat has not cleared the balance liability, the 4th respondent will proceed for sale of the property purchased by the Panchayat. If excess amount over debt is recovered, it will be paid to the Panchayat.

W.P.(C)27984/2006 is filed by the contractor who has constructed a building in the mortgaged property purchased by the respondent Panchayat. The prayer in the writ petition is for release of the contract amount. Counsel for the Panchayat submitted that the work is not evaluated and therefore the Panchayath cannot make payment. More over, according to the Panchayat it cannot make any more investment in the property

which is mortgaged to the Bank. I do not think the Panchayat can wriggle out of the contracted liability merely because the property was subject to mortgage. Since the claim pertains to contract, it is for the petitioner to claim the amount by filing civil suit.

3. Both writ petitions are disposed of as above.

4. Since the Panchayat has constructed a building, recovery officer will value the building as well and put the property for sale by taking into account the value of the building also.

C.N.RAMACHANDRAN NAIR,
JUDGE

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